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*Attorneys for Plaintiff*

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

ARLENE MILLS, SURVIVING SPOUSE  
AND PERSONAL REPRESENTATIVE  
FOR THOMAS E, MILLS (deceased),

Plaintiff,

v.

JOHNSON and JOHNSON, a/k/a JOHNSON  
and JOHNSON ORTHOPAEDICS, DEPUY  
ORTHOPAEDICS, INC. a/k/a DEPUY

Defendants.

CASE NO. 3:19-cv-02535-K

SUBMITTAL PER CMO-12  
(Administrative Order)

IN RE DEPUY ORTHOPAEDICS, INC.  
PINNACLE HIP IMPLANT  
PRODUCTS LIABILITY LITIGATION

MDL DOCKET NO.  
3:11-MD-2244-K

Honorable Ed Kinkeade

Plaintiff, Arlene Mills, above-named (hereafter “Arlene”), respectfully files this submittal per Case Management Order 12:

**Preservation Requirements:**

First, Plaintiff’s updated PPP form and associated documents pursuant to CMO12 are attached as Exhibit 1.

Second, Plaintiff has notified all medical providers since the original Pinnacle Hip was put in on 1/28/2008 (left hip, metal on metal) to preserve all records. These medical providers include all medical personnel who have rendered any medical care, related or unrelated, to the Pinnacle surgery on 1/28/2008, 10/4/2011, and 10/7/2014 to the present. The medical hospitals, surgery center and related facilities have also been notified to preserve all radiographs/diagnostic imaging, labs for blood levels, and pharmacies since 1/28/2008. The following is the list of places where relevant care has been rendered and where Plaintiff has advised records should be preserved.

1. Community Hospital of Anaconda/Pintler Surgical  
305 W. Pennsylvania Ave.  
Anaconda, MT 59711
2. St. Vincent’s Healthcare  
1233 N. 30<sup>th</sup> St.  
Billings, MT 59101
3. Ortho Montana  
2900 12<sup>th</sup> Ave. N. STE 140W  
Billings, MT 59101
4. Veterans Administration Center Hospital  
Fort Harrison, MT 59636

### **Discovery Requirements:**

1. The operative report for the Pinnacle implant at issue is attached as Exhibit 2. All records of the second revision on 10/07/2014 (of the Pinnacle implant) right total hip arthroplasty, to the present, are attached as Exhibit 3.
2. No death is claimed. Thomas did die on 5/2/2020 and is now represented by his wife. His death was not related to this product lawsuit.
3. Plaintiff's fact sheet is again provided and attached as Exhibit 4.
4. Records prior to the 1/28/2008 Pinnacle implant were requested but have not been provided.
5. See above provision 3.
6. Plaintiff Arlene Mills' attorney's Affidavit regarding records is attached as Exhibit 5.

### **Expert Reports:**

A1. Plaintiff has previously listed experts he intends to call if this case goes to trial. Four of the experts have previously provided their expert reports/summaries, have been deposed and have testified at trial in the MDL action. These include Dr. Bernard Morrey, Dr. Albert Burstein, Dr. Antoni Nargol and Dr. Nicholas Athanasou. Additionally, Plaintiff will call Tom's own orthopedic surgeons. The first is Dr. Peter Wendt, an Anaconda, Montana, board certified orthopedic surgeon, who implanted the Pinnacle hip in 2008 and the revised total hip in 2011. He will not be giving any opinions other than to testify that Plaintiff needed a hip replacement which he performed on the 2008 surgery using the Pinnacle metal on metal hip. That hip had been broken for some unknown reason and had to be replaced on 10/4/2011. Dr. Wendt also performed the 2008 replacement surgery and will testify from his records as to what he found and did. The 2011 surgery was the issue and that will be addressed by Dr. Dean Sukin who performed the essentially third total hip replacement.

Dr. Sukin is a board-certified orthopedic surgeon who performed Plaintiff's corrective surgery. Dr. Sukin received his medical degree from The University of Health Sciences at the Chicago Medical School. He then performed a surgical internship followed by an orthopedic residency at the University of Utah Medical Center. Dr. Sukin also completed a fellowship program in Adult Reconstruction Total Joints and Osteotomies at the University of California San Diego. All of Plaintiff's medical records reviewed by Dr. Sukin, have been filed herein which includes inter alia Plaintiff's operative report and pathology records.

Dr. Sukin reviewed Mr. Mills earlier orthopedic records and he will testify that prior to October 7, 2014, Tom Mills had been suffering from a very sore and painful hip. Based upon the advice of his orthopedic surgeon, Mr. Mills agreed to have additional revision of his prior right total hip arthroplasty. Prior to the revision of the failed right total hip arthroplasty, Mr. Mills had a DePUY Pinnacle 36 high-wall polyethylene liner and a femoral component DePUY s-rom, which was a Ztt18#D large sleeve a plus 6/36 head and a 300x13x18 high offset bowed revision s-rom stem. The failed right total hip arthroplasty corrective surgery was performed on October 7, 2014.

The hip which failed was shown to have had elevated metal levels, metallosis, a loose femoral stem and metal on metal acetabular articulation. A Johnson & Johnson DePUY insert was used in its place.

The hip that was replaced had been a hip replacement done in 2008 by Dr. Peter Wendt of Anaconda, MT, with the Pinnacle ASR cup and metal on metal articulation with a cemented summit stem. Mr. Mills had that hip surgically addressed on 10/4/2011, again by Dr. Wendt, with a further revision with removal of the prior components, placement of 54 MM Pinnacle cup uncemented with two additional 6.5-millimeter screws, placement of 36-millimeter liner,

removal of the prior stem and cement mantle and placement of the un-cemented porous coded 20 MM revision stem. This hip which was replaced in October 2011 proved to be defective.

The hip replacement prosthesis was designed, manufactured, and sold by the Pinnacle Defendants. Specifically, Defendants sold the hip device through Anaconda Community Hospital to Mr. Mills in Anaconda, Montana. The S-Rom ® hip system, which included a metal-on-metal femoral head, pinnacle acetabular cup was ultimately removed on October 7, 2014, in Billings, Montana.

Following the 2011 surgery, Mr. Mills was advised by his orthopedic surgeon that healing would take a substantial period of time and that he could expect to have some pain and limitation in his hip for a substantial period of time in which it was healing. Beginning in 2011 he did develop pain in the right hip and low back and received various therapy and treatment for that. Over time the right hip became very painful, and its condition seemed to deteriorate over time. He was seen by Dr. Sukin in Billings, in 2014. The hip showed excessive wear of the ball and socket and metallic particles. The implant had loosened and failed. There was bone loss and tissue necrosis.

Dr. Sukin will testify that the metal-on-metal implant was defective and failed and that Mr. Mills suffered as a result. He could see the product was loose and permitted excessive wear which caused friction and released toxic chemicals into Mr. Mill's body. He could see the necrosis and bone loss caused by the prosthetic hip.

A2. Reports and testimony from the other 4 experts has been previously provided to the Court and opposing counsel. The defects existed at the time of the implant and caused Plaintiff's injuries and need for future hip surgery.

A3. At this time we are not making a marketing defect claim except to assert that the Pinnacle product was not marketed and sold with any warning about the potential complications

from the product. It did not work and accomplish the functions for which it was manufactured. It failed and caused a great amount of toxicity in Plaintiff.

Dated this 25<sup>th</sup> day of May, 2022

DOUBEK, PYFER & STORRAR

By /s/ John C. Doubek  
John Doubek  
Attorney for Plaintiff, Arlene Mills

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of May, 2022, I served a true and correct copy of the foregoing upon opposing counsel by as follows:

X CM/ECF  
\_\_\_\_ Hand Delivery  
\_\_\_\_ Mail  
\_\_\_\_ Overnight Delivery Service  
\_\_\_\_ Fax  
\_\_\_\_ E-Mail

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